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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

EDWARD FIELDS, *et al.*

Plaintiffs,

vs.

WISE MEDIA, LLC, *et al.*,

Defendants.

CLASS ACTION

Case No. 3:12-cv-05160-WHA

**DECLARATION OF ERIK
KRISTIANSON IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANT MBLOX, INC.'S
MOTION FOR SUMMARY JUDGMENT**

Date: July 11, 2013
Time: 8:00 a.m.
Ct rm: 8, 19th Floor
Judge: The Hon. William Alsup



1 I, Erik Kristianson, declare as follows:

2 1. I am a plaintiff in the above-captioned action. Unless otherwise stated, I
3 have personal knowledge of the matters stated herein.

4 2. I own and use a mobile phone, the service for which is provided through
5 AT&T. I use this phone for phone calls, text messages, and Internet access. My mobile
6 phone service is part of a joint plan shared with my grandmother Cathie O'Hanks. Thus,
7 my mobile phone usage is reflected in bills in Cathie O'Hanks' name. However, I am the
8 sole and exclusive user of my mobile phone.

9 3. I have never sought to enroll in a subscription where I would be charged
10 for receiving text messages. This is not something in which I am interested.

11 4. Prior to learning about Defendants' misconduct at issue in this action, I had
12 never heard of any of the Defendants, HoroscopeGenie, or the website located at
13 <www.horoscopegenie.com>.

14 5. Prior to learning about Defendants' misconduct at issue in this action, I had
15 never visited <www.horoscopegenie.com>.

16 6. Prior to learning about Defendants' misconduct at issue in this action, I had
17 no interest in horoscopes. To this day, I have no interest in horoscopes.

18 7. I have never entered my mobile phone number into a website in order to
19 receive horoscopes. I never ticked any box on a website as part of an agreement to pay
20 for text messages regarding horoscopes. I never entered an access code into a
21 website, which I received on my mobile phone.

22 8. On February 3, 2012, I received a text message from the five-digit number
23 271-40. The text advertised a horoscope service (*i.e.*, HoroscopeGenie), which offered
24 three horoscope texts per week for \$9.99 per month.

25 9. At the time I received the text, I did not recognize the five-digit sender
26 number or the name "HoroscopeGenie." I had never expressed interest in any
27 horoscope texting service, had never heard of HoroscopeGenie, and had never visited
28 the website located at <www.horoscopegenie.com>.

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10. Because I did not recognize the five-digit sender number, and had no interest in horoscope services, I quickly sent a reply text indicating that the text was unsolicited, that I had no interest in being enrolled in the HoroscopeGenie service, and that I did not want to receive future texts from the sender.

11. Despite my efforts, I continued to receive infrequent texts (*i.e.* about once a month) from HoroscopeGenie. A couple of times, I responded to these texts by stating that they were unsolicited and unwanted.

12. I did not discover that I was being charged \$9.99 per month for the HoroscopeGenie service until a few months later, when I took the time to review a lengthy mobile telephone bill that had been addressed to Cathie O'Hanks, the primary account holder. Upon discovering an unauthorized charge by Wise Media for HoroscopeGenie on the April 2012 bill, I reviewed my prior phone bills and learned that Wise Media had charged me, without my authorization, \$9.99 during February and March as well. My phone bills for these months were 52 pages, 46 pages, and 26 pages respectively.

13. These charges for HoroscopeGenie were completely unauthorized. I never had any interest in HoroscopeGenie. I never had any intent to sign up for HoroscopeGenie. I never visited the website <www.horoscopegenie.com>. And I never took any action to sign up for HoroscopeGenie.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on May 30, 2013.

Erik Kristianson
erik.kristianson (May 30, 2013)

Erik Kristianson